

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

# COLLECTION, VERIFICATION, AND DISCLOSURE OF INFORMATION BY ONLINE MARKETPLACES TO INFORM CONSUMERS

Mr. PALLONE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5502) to require online marketplaces to verify certain information regarding high-volume third party sellers of consumer products on such online marketplaces and to disclose to consumers certain contact and other information regarding such high-volume third party sellers, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5502

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act” or the “INFORM Consumers Act”.

## SEC. 2. COLLECTION, VERIFICATION, AND DISCLOSURE OF INFORMATION BY ONLINE MARKETPLACES TO INFORM CONSUMERS.

(a) COLLECTION AND VERIFICATION OF INFORMATION.—

(1) COLLECTION.—

(A) IN GENERAL.—An online marketplace shall require any high-volume third party seller on such online marketplace’s platform to provide, not later than 10 days after qualifying as a high-volume third party seller on the platform, the following information to the online marketplace:

(i) BANK ACCOUNT.—

(I) IN GENERAL.—A bank account number, or, if such seller does not have a bank account, the name of the payee for payments issued by the online marketplace to such seller.

(II) PROVISION OF INFORMATION.—The bank account or payee information required under subclause (I) may be provided by the seller in the following ways:

(aa) To the online marketplace.

(bb) To a payment processor or other third party contracted by the online marketplace to maintain such information, provided that the online marketplace ensures that it can obtain such information within 3 business days from such payment processor or other third party.

(ii) CONTACT INFORMATION.—Contact information for such seller as follows:

(I) With respect to a high-volume third party seller that is an individual, the individual’s name.

(II) With respect to a high-volume third party seller that is not an individual, one of the following forms of contact information:

(aa) A copy of a valid government-issued identification for an individual acting on behalf of such seller that includes the individual’s name.

(bb) A copy of a valid government-issued record or tax document that includes the business name and physical address of such seller.

(iii) TAX ID.—A business tax identification number, or, if such seller does not have a business tax identification number, a taxpayer identification number.

(iv) WORKING EMAIL AND PHONE NUMBER.—A current working email address and phone number for such seller.

(B) NOTIFICATION OF CHANGE; ANNUAL CERTIFICATION.—An online marketplace shall—

(i) periodically, but not less than annually, notify any high-volume third party seller on such online marketplace’s platform of the requirement to keep any information collected under subparagraph (A) current; and

(ii) require any high-volume third party seller on such online marketplace’s platform to, not later than 10 days after receiving the notice under clause (i), electronically certify that—

(I) the seller has provided any changes to such information to the online marketplace, if any such changes have occurred; or

(II) there have been no changes to such seller’s information.

(C) SUSPENSION.—In the event that a high-volume third party seller does not provide the information or certification required under this paragraph, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide such information or certification not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until such seller provides such information or certification.

(2) VERIFICATION.—

(A) IN GENERAL.—An online marketplace shall—

(i) verify the information collected under paragraph (1)(A) not later than 10 days after such collection; and

(ii) verify any change to such information not later than 10 days after being notified of such change by a high-volume third party seller under paragraph (1)(B).

(B) PRESUMPTION OF VERIFICATION.—In the case of a high-volume third party seller that provides a copy of a valid government-issued tax document, any information contained in such document shall be presumed to be verified as of the date of issuance of such document.

(3) DATA USE LIMITATION.—Data collected solely to comply with the requirements of this section may not be used for any other purpose unless required by law.

(4) DATA SECURITY REQUIREMENT.—An online marketplace shall implement and maintain reasonable security procedures and practices, including administrative, physical, and technical safeguards, appropriate to the nature of the data and the purposes for which the data will be used, to protect the data collected to comply with the requirements of this section from unauthorized use, disclosure, access, destruction, or modification.

(b) DISCLOSURE REQUIRED.—

(1) REQUIREMENT.—

(A) IN GENERAL.—An online marketplace shall—

(i) require any high-volume third party seller with an aggregate total of \$20,000 or more in annual gross revenues on such online marketplace, and that uses such online marketplace’s platform, to provide the information described in subparagraph (B) to the online marketplace; and

(ii) disclose the information described in subparagraph (B) to consumers in a clear and conspicuous manner—

(I) on the product listing page (including via hyperlink); or

(II) in the order confirmation message or other document or communication made to the consumer after the purchase is finalized and in the consumer’s account transaction history.

(B) INFORMATION DESCRIBED.—The information described in this subparagraph is the following:

(i) Subject to paragraph (2), the identity of the high-volume third party seller, including—

(I) the full name of the seller, which may include the seller name or seller’s company name, or the name by which the seller or company operates on the online marketplace;

(II) the physical address of the seller; and

(III) contact information for the seller, to allow for the direct, unhindered communication with high-volume third party sellers by users of the online marketplace, including—

(aa) a current working phone number;

(bb) a current working email address; or

(cc) other means of direct electronic messaging (which may be provided to such seller by the online marketplace), provided that the requirements of this item shall not prevent an online marketplace from monitoring communications between high-volume third party sellers and users of the online marketplace for fraud, abuse, or spam.

(ii) Whether the high-volume third party seller used a different seller to supply the consumer product to the consumer upon purchase, and, upon the request of an authenticated purchaser, the information described in clause (i) relating to any such seller that supplied the consumer product to the purchaser, if such seller is different than the high-volume third party seller listed on the product listing prior to purchase.

(2) EXCEPTION.—

(A) IN GENERAL.—Subject to subparagraph (B), upon the request of a high-volume third party seller, an online marketplace may provide for partial disclosure of the identity information required under paragraph (1)(B)(i) in the following situations:

(i) If such seller certifies to the online marketplace that the seller does not have a business address and only has a residential street address, or has a combined business and residential address, the online marketplace may—

(I) disclose only the country and, if applicable, the State in which such seller resides; and

(II) inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace.

(ii) If such seller certifies to the online marketplace that the seller is a business that has a physical address for product returns, the online marketplace may disclose the seller’s physical address for product returns.

(iii) If such seller certifies to the online marketplace that the seller does not have a phone number other than a personal phone number, the online marketplace shall inform consumers that there is no phone number available for the seller and that consumer inquiries should be submitted to the seller’s email address or other means of electronic messaging provided to such seller by the online marketplace.

(B) LIMITATION ON EXCEPTION.—If an online marketplace becomes aware that a high-volume third party seller has made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subparagraph (A) or that a high-volume third party seller who has requested and received a provision for a partial disclosure under subparagraph (A) has not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to respond not later than 10

days after the issuance of such notice, suspend any future sales activity of such seller unless such seller consents to the disclosure of the identity information required under paragraph (1)(B)(i).

(3) **REPORTING MECHANISM.**—An online marketplace shall disclose to consumers in a clear and conspicuous manner on the product listing of any high-volume third party seller a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.

(4) **COMPLIANCE.**—If a high-volume third party seller does not comply with the requirements to provide and disclose information under this subsection, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide or disclose such information not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until the seller complies with such requirements.

(C) **ENFORCEMENT BY FEDERAL TRADE COMMISSION.**—

(1) **UNFAIR AND DECEPTIVE ACTS OR PRACTICES.**—A violation of subsection (a) or (b) by an online marketplace shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) **POWERS OF THE COMMISSION.**—

(A) **IN GENERAL.**—The Commission shall enforce subsections (a) and (b) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

(B) **PRIVILEGES AND IMMUNITIES.**—Any person that violates subsection (a) or (b) shall be subject to the penalties, and entitled to the privileges and immunities, provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(3) **REGULATIONS.**—The Commission may promulgate regulations under section 553 of title 5, United States Code, with respect to the collection, verification, or disclosure of information under this section, provided that such regulations are limited to what is necessary to collect, verify, and disclose such information.

(4) **AUTHORITY PRESERVED.**—Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(d) **ENFORCEMENT BY STATE ATTORNEYS GENERAL.**—

(1) **IN GENERAL.**—If the attorney general of a State has reason to believe that any online marketplace has violated or is violating this section or a regulation promulgated under this section that affects one or more residents of that State, the attorney general of the State may bring a civil action in any appropriate district court of the United States, to—

(A) enjoin further such violation by the defendant;

(B) enforce compliance with this section or such regulation;

(C) obtain civil penalties in the amount provided for under subsection (c);

(D) obtain other remedies permitted under State law; and

(E) obtain damages, restitution, or other compensation on behalf of residents of the State.

(2) **NOTICE.**—The attorney general of a State shall provide prior written notice of any action under paragraph (1) to the Commission and provide the Commission with a copy of the complaint in the action, except in any case in which such prior notice is not

feasible, in which case the attorney general shall serve such notice immediately upon instituting such action.

(3) **INTERVENTION BY THE COMMISSION.**—Upon receiving notice under paragraph (2), the Commission shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein; and

(C) to file petitions for appeal.

(4) **LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.**—If the Commission has instituted a civil action for violation of this section or a regulation promulgated under this section, no State attorney general, or official or agency of a State, may bring a separate action under paragraph (1) during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this section or a regulation promulgated under this section that is alleged in the complaint. A State attorney general, or official or agency of a State, may join a civil action for a violation of this section or regulation promulgated under this section filed by the Commission.

(5) **RULE OF CONSTRUCTION.**—For purposes of bringing a civil action under paragraph (1), nothing in this section shall be construed to prevent the chief law enforcement officer, or official or agency of a State, from exercising the powers conferred on such chief law enforcement officer, or official or agency of a State, by the laws of the State to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

(6) **ACTIONS BY OTHER STATE OFFICIALS.**—

(A) **IN GENERAL.**—In addition to civil actions brought by attorneys general under paragraph (1), any other officer of a State who is authorized by the State to do so, except for any private person on behalf of the State attorney general, may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) **SAVINGS PROVISION.**—Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

(e) **SEVERABILITY.**—If any provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of this section and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

(f) **DEFINITIONS.**—In this section:

(1) **COMMISSION.**—The term “Commission” means the Federal Trade Commission.

(2) **CONSUMER PRODUCT.**—The term “consumer product” has the meaning given such term in section 101 of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301) and section 700.1 of title 16, Code of Federal Regulations.

(3) **HIGH-VOLUME THIRD PARTY SELLER.**—

(A) **IN GENERAL.**—The term “high-volume third party seller” means a participant on an online marketplace’s platform who is a third party seller and, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products and an aggregate total of \$5,000 or more in gross revenues.

(B) **CLARIFICATION.**—For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues under subparagraph (A), an online marketplace shall only be required to count sales or transactions made through the online marketplace and for which payment was proc-

essed by the online marketplace, either directly or through its payment processor.

(4) **ONLINE MARKETPLACE.**—The term “online marketplace” means any person or entity that operates a consumer-directed electronically based or accessed platform that—

(A) includes features that allow for, facilitate, or enable third party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States;

(B) is used by one or more third party sellers for such purposes; and

(C) has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(5) **SELLER.**—The term “seller” means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace’s platform.

(6) **THIRD PARTY SELLER.**—

(A) **IN GENERAL.**—The term “third party seller” means any seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through such online marketplace’s platform.

(B) **EXCLUSIONS.**—The term “third party seller” does not include, with respect to an online marketplace—

(i) a seller who operates the online marketplace’s platform; or

(ii) a business entity that has—

(I) made available to the general public the entity’s name, business address, and working contact information;

(II) an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and

(III) provided to the online marketplace identifying information, as described in subsection (a), that has been verified in accordance with that subsection.

(7) **VERIFY.**—The term “verify” means to confirm information provided to an online marketplace pursuant to this section, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided are valid, corresponding to the seller or an individual acting on the seller’s behalf, not misappropriated, and not falsified.

(g) **RELATIONSHIP TO STATE LAWS.**—No State or political subdivision of a State, or territory of the United States, may establish or continue in effect any law, regulation, rule, requirement, or standard that conflicts with the requirements of this section.

(h) **EFFECTIVE DATE.**—This section shall take effect 180 days after the date of the enactment of this Act.

The **SPEAKER** pro tempore. Pursuant to the rule, the gentleman from New Jersey (Mr. **PALLONE**) and the gentleman from Florida (Mr. **BILIRAKIS**) each will control 20 minutes.

The Chair recognizes the gentleman from New Jersey.

GENERAL LEAVE

Mr. **PALLONE**. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 5502.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. **PALLONE**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to speak in support of H.R. 5502, the Integrity, Notification, and Fairness in Online Retail

Marketplaces for Consumers Act, also known as the INFORM Consumers Act.

In the 21st century, e-commerce is no longer a luxury but a necessity for millions of Americans seeking to purchase household essentials. For thousands of businesses across the country, e-commerce sites serve as a vital platform connecting American producers to consumers worldwide.

Regrettably, online marketplaces have become pervasive sources of counterfeit, defective, and unsafe goods. The Government Accountability Office found that 20 of 47 items it purchased from third-party sellers on popular consumer websites were counterfeit.

Sixteen percent of counterfeit products seized in fiscal year 2018 posed a direct risk to health, safety, and security. Such frauds steal market share from legitimate businesses and can cause severe reputational damage to the companies and products they impersonate.

The INFORM Consumers Act will help curb the deluge of counterfeit, defective, and unsafe products on e-commerce sites. The bill requires these sites to display critical information about high-volume sellers, including contact information, business tax ID numbers, and working email addresses and phone numbers. Such transparency will help prevent those fake and unsafe goods from getting into our homes and empower consumers and businesses to seek recourse.

I commend Consumer Protection and Commerce Subcommittee Chairwoman SCHAKOWSKY and Ranking Member BILIRAKIS for coming together on this bill. It passed out of the Energy and Commerce Committee by voice vote last November.

Mr. Speaker, I urge my colleagues to help protect consumers by supporting this bill, and I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

I rise today in strong support of H.R. 5502, the INFORM Consumers Act.

This is a big deal, Mr. Speaker. It really is. We worked really hard to get consensus on this particular bill in the Energy and Commerce Committee.

I commend the chairman of the Energy and Commerce Committee; the ranking member, CATHY McMORRIS RODGERS; and the chair of the subcommittee, my colleague, JAN SCHAKOWSKY. She is the lead sponsor of the bill, and I am the Republican sponsor of the bill. It is a great accomplishment.

At the height of the COVID-19 pandemic, when physical storefronts were unable to open their doors, many consumers turned to online marketplaces for all of their goods. However, with such a rise in online purchases, criminals saw a new way to prey upon innocent consumers.

These storefronts were now bombarded with thousands of similar products with little to no information about the background of the goods.

Some of the goods available were originally stolen from retail stores, counterfeited—and this happens in all our congressional districts—counterfeited from a foreign nation, or even made with dangerous components or forced labor.

That is why this bipartisan, bicameral legislation is necessary to increase transparency and safety online, and I am proud to help co-lead this bill with the chairwoman of the subcommittee, Ms. SCHAKOWSKY.

If H.R. 5502 is signed into law—and I think it will be—consumers and storefronts will be armed with information to understand where these products come from and whether they are real or not. That is not much to ask for.

It also provides protections to our small sellers and local mom-and-pop stores whose privacy is protected while also being able to operate with clear guidelines and one set of rules for doing business in all 50 States.

The INFORM Consumers Act establishes a uniform national standard to protect consumers from bad actors and online marketplaces by requiring certain large sellers of new and used consumer goods to verify their contact information, such as email, phone number, and business tax ID, within days of being listed as a high-volume seller on an online platform.

I thank, again, Chairwoman SCHAKOWSKY, for working with me in good faith to make this a strong product with broad consensus from Congress—it takes both parties to get these things done—and from a diverse set of stakeholders like Etsy, Poshmark, eBay, Amazon, but also retail industry leaders such as Home Depot, Walgreens, and Walmart.

The support around this legislation demonstrates what happens when Congress works together to move important legislation that will protect all Americans. That was our goal. I am glad to see that this bill will move forward in regular order, and I urge all of my colleagues to support this legislation out of the House today. Let's get this signed into law as soon as possible.

Mr. Speaker, I reserve the balance of my time.

Mr. PALLONE. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Illinois (Ms. SCHAKOWSKY), the sponsor of this legislation and the chair of the subcommittee from which it came.

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentleman for yielding, and I thank so many in the Energy and Commerce Committee for their hard work. I want to say a special thank-you to GUS BILIRAKIS, who is the Republican cosponsor of this very important and bipartisan legislation. I also want to ditto all the words that he said about this important bill.

What we know is that the INFORM Consumers Act, H.R. 5502, protects American consumers when they shop online.

Counterfeit and stolen goods have become readily available on popular

websites like Amazon and Facebook and beyond. As a result, American consumers face new dangers when they shop online. Counterfeit and stolen products defraud consumers, and they pose a risk to consumers' health, their safety, and their security.

Online marketplaces are failing right now to crack down on fraudsters and scammers. Instead, they actually have fueled high-profile cases of organized crime rings that are now brazenly hitting retail stores.

We have heard from consumers that Mr. BILIRAKIS mentioned. Many retailers are being hurt by this.

These stolen goods too often end up on the online marketplaces, and the INFORM Consumers Act puts an end to the online sale of dangerous products and stolen goods and limits criminal behavior.

The bill holds online marketplaces accountable for enabling criminal activity on their platforms. It requires online marketplaces to verify the identity of their third-party sellers. Verifying sellers lets Americans have confidence now, which we want them to have, when they shop online.

The bill empowers the Federal Trade Commission to enforce compliance with this bill.

I am grateful to my colleague, Mr. BILIRAKIS, and to all of those who have been supporting this legislation to finally protect consumers. I am proud that this bill has bipartisan support, and I certainly urge all of my colleagues to support the INFORM Consumers Act, H.R. 5502. Let's vote for it today.

Mr. BILIRAKIS. Mr. Speaker, I thank the staff for doing an outstanding job on this bill. It was not easy to find consensus, but we persevered. We did not give up. We didn't give up, and guess what? The American people are going to be benefiting from this. That is the most important thing. Our constituents will benefit from this bill.

Again, my subcommittee staffer, Tim Kurth, has done an outstanding job, along with the other members of the staff and Jan's staff, as well.

Mr. Speaker, I hope we pass this bill unanimously, and I yield back the balance of my time.

Mr. PALLONE. Mr. Speaker, as you can see, this bill is truly bipartisan, and I urge all of my colleagues on both sides of the aisle to vote in favor of it.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. PALLONE) that the House suspend the rules and pass the bill, H.R. 5502, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. ROSENDALE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

□ 1700

#### GUIDANCE CLARITY ACT OF 2021

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I move to suspend the rules and pass the bill (S. 533) to require a guidance clarity statement on certain agency guidance, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 533

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Guidance Clarity Act of 2021”.

#### SEC. 2. GUIDANCE CLARITY STATEMENT REQUIRED.

(a) REQUIREMENT.—Each agency, as defined in section 551 of title 5, United States Code, shall include a guidance clarity statement as described in subsection (b) on any guidance issued by that agency under section 553(b)(3)(A) of title 5, United States Code, on and after the date that is 30 days after the date on which the Director of the Office of Management and Budget issues the guidance required under subsection (c).

(b) GUIDANCE CLARITY STATEMENT.—A guidance clarity statement required under subsection (a) shall—

(1) be displayed prominently on the first page of the document; and

(2) include the following: “The contents of this document do not have the force and effect of law and do not, of themselves, bind the public or the agency. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.”.

(c) OMB GUIDANCE.—Not later than 90 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall issue guidance to implement this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from New York (Mrs. CAROLYN B. MALONEY) and the gentleman from Pennsylvania (Mr. KELLER) each will control 20 minutes.

The Chair recognizes the gentlewoman from New York.

GENERAL LEAVE

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on this measure.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New York?

There was no objection.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 533 would require Federal agencies to include a guidance clarity statement on the first page of guidance documents.

Federal Rules, regulations, and guidance are complex, even at best of

times. For most Americans who do not spend hours per day reading through the Federal Register, guidance documents can be very confusing. This simple, good government bill will help clarify for the public that agency guidance is intended to help guide the implementation of Federal regulations, not to act as additional legally binding rules.

I thank Representative LUETKEMEYER and Ranking Member COMER for working with us to perfect this bill. This is a bipartisan bill which has passed the Senate by unanimous consent.

Mr. Speaker, I urge all of my colleagues to support this legislation so it can be sent to the President's desk, and I reserve the balance of my time.

Mr. KELLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, agency guidance serves an important function in the Federal regulatory system. Agency guidance helps regulated parties and the public understand how agencies will interpret the laws and administer their programs.

However, agency guidance can be—and has been—abused. For example, agencies can use guidance documents to intimidate small businesses and individuals into compliance with agency views, sometimes under the threat of enforcement action.

Small businesses and the American people often do not have the legal resources or necessary background to know when an agency statement is binding law. It is tough for the public to determine what agency statements are binding and what are not.

Even Federal agencies have a tough time understanding the difference. They have been known to try to start enforcement actions based simply on guidance. Agencies have also been known to attempt to issue binding rules by quietly slipping rule language into guidance documents. This clearly bypasses the Administrative Procedure Act's requirements that were put in place to protect regulated individuals and small businesses.

The courts coined the term “non-rule rule” to describe this Big Government sleight of hand, and the courts have rightly struck down such rules that only appeared in agency guidance.

The Guidance Clarity Act offers a simple solution to these problems. It requires agency guidance documents to include the following explicit statement:

“The contents of this document do not have the force and effect of law and do not, of themselves, bind the public or the agency.

“This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.”

With that stroke of the pen, gone will be the days in which agencies can use guidance documents to force small businesses and individuals to comply with nonbinding agency views. Gone too will be the days of the agencies try-

ing to issue non-rule rules that bypass the Administrative Procedure Act's requirements for legislative rules.

I thank Senator LANKFORD for his hard work to make this legislation the law of the land.

I also thank the sponsor of the companion bill in this House, the ranking member of the Small Business Committee, BLAINE LUETKEMEYER, who has worked tirelessly on this bill since he first introduced it during the 115th Congress.

Also, I thank House Oversight and Reform Committee Chairwoman MALONEY, Ranking Member JAMES COMER, and Senate Homeland Security and Governmental Affairs Chairman GARY PETERS for their critical efforts to help make passage of this bill a bipartisan success.

Mr. Speaker, I urge my colleagues to support the bill, and I reserve the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, if the gentleman from Pennsylvania has no further speakers, then I am prepared to close.

Mr. Speaker, I reserve the balance of my time.

Mr. KELLER. Mr. Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. LUETKEMEYER).

Mr. LUETKEMEYER. Mr. Speaker, I rise in support of S. 533, the Guidance Clarity Act, which is identical to my bill, H.R. 1508, which passed the House by voice vote on October 20, 2021, almost 13 months ago.

American small businesses have enough to worry about, especially in this economy. Inflation, supply chain issues, and labor shortages have made it exceedingly difficult to be a small business owner right now. These are people who don't have time to worry about keeping track of the latest government red tape, which is made more difficult by the conflation of agency guidance with regulations or laws.

The purpose of guidance is to assist Americans in understanding rules and regulations and give them suggestions on how to adhere to them. However, it is important to note that guidance is not law, nor is it enforceable as law—it is simply a suggestion.

Guidance is not approved by Congress, nor does it go through the Federal rulemaking process which allows for public input and legal scrutiny of agency actions. Therefore, citizens are free to take the suggestion or completely ignore it.

Unfortunately, over the years, regulators have threatened punitive action against businesses for not following guidance. I am not talking about people breaking the law or ignoring Federal regulations who should certainly face consequences. I am talking about small businesses who are following Federal regulations but simply are not doing it in the manner certain regulators would prefer—the way their guidance suggested regulations be implemented. That is unacceptable, and it is illegal. Regulators have no legal authority to enforce guidance, and any